2004 Bellwood Lecture:

Justice for All: Are We Fulfilling the Pledge?

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Thank you for that kind introduction, Ernie, and thank you for all the work you do through Idaho Legal Aid Services for the poor of Idaho. Thank you Dean Burnett for inviting me to deliver the 2004 Sherman J. Bellwood Lecture and for affording me an opportunity to highlight the importance of equal justice for all Americans and to speak about the federal commitment to civil legal services for the poor as the Legal Services Corporation celebrates its 30th anniversary this year. I am honored and humbled to follow Supreme Court Justices Ginsburg, Scalia, and O'Connor, as well as Bryan Stevenson, Janet Reno, and all of the other eminent speakers previously invited to this prestigious lecture series. I am most pleased to be with you.

The concept of “justice for all”

Today I would like to speak with you about achieving access to civil legal assistance for all as an essential element of securing justice, an issue about which I feel passionately, having devoted my entire professional career to providing legal services to the poor.

Most Americans, regardless of whether they have had any legal training, are familiar with the phrase “Equal Justice Under Law.” The phrase is emblazoned above the front portico of the United States Supreme Court building and on other courthouses throughout the country. Although the precise origin of the phrase is unknown, “Equal Justice Under Law” is an ideal cherished by Americans. As Supreme Court Justice Lewis Powell noted, “Equal justice under law is not just a caption on the façade of the Supreme Court building. It is perhaps the most inspiring ideal of our society . . . It is fundamental that justice should be the same,

in substance and availability, without regard to economic status."

The roots of the pursuit of justice are found in the Bible. Indeed, Justice Ruth Bader Ginsburg opened last year's Bellwood Lecture by quoting Deuteronomy Chapter 16, Verse 20: "Justice, justice shall you pursue, that you may thrive." The legal origins go back to the Magna Carta, which in 1215 provided "To no one will we sell, to no one will we refuse or delay, right or justice." The Preamble to our Constitution affirms that its central purpose is to "*establish justice*." Alexander Hamilton said, "the first duty of society is justice." And, since 1892, we have pledged allegiance to our flag "with liberty *and justice for all.*" Without a doubt, equal justice is a bedrock legal principle for us.

What distinguishes our system of government in large part is the separation of powers between the Executive, Legislative and Judicial branches. We have an independent judiciary that ensures our adherence to the rule of law. Our

judicial system protects individual rights and makes fundamental determinations relating to life, liberty and property. The rights and protections imbedded in law are not self-enforcing, however. Rather, individuals must often secure or defend their rights by transforming their demands into legal claims or defenses and interacting with our courts and the laws themselves. The procedural requirements of our legal system are complicated; the language of our laws is often opaque, frequently impenetrable, and often subject to multiple meanings and interpretations. Having access to the specialized skills of a lawyer is almost always necessary to navigate the complexities of our legal system. As the Supreme Court observed in its 1932 decision in *Powell v. Alabama*, "The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel."

We have a problem, however: lawyers cost money and poor people don't have money. Thus, poor people all too

often do not have lawyers, even when they desperately need them.

To be eligible for federally funded civil legal assistance, a person can earn no more than 125% of the federal definition of poverty. That definition is not generous. A family of four is considered impoverished if the family's *gross* annual income is less than $18,850. To be eligible for LSC funded civil legal assistance, a family of four cannot earn more than $23,563. According to data from the 2000 census, there are more than 43 million Americans who meet the eligibility requirements for federally funded legal assistance. Despite the economic boom of the 1990s, there was actually a 5.7 percent increase in the number of people living in poverty during that decade. And more recent data only shows the trend increasing. This past August, the Census Bureau released its findings that, for the third consecutive year, the poverty rate and the number of persons living in poverty rose. Alarmingly, 17.6% of all

American children – *almost 13 million children* – now live in poverty. Of even greater concern, 15.3 million people live in *extreme* poverty, that is, they subsist on *less than half* the income defined as the poverty line, a number that is higher than at any time since the Census Bureau began collecting data 28 years ago.

As lawyers, we swear fidelity to the ideal of equal justice. We should therefore be committed to ensuring that the legal needs of the poor are addressed. The Supreme Court's statement in *Griffin v. Illinois,* that "there can be no equal justice where the kind of trial a man gets depends upon the amount of money he has" has become axiomatic for lawyers in our country. Yet, if we were to grade ourselves on whether we have fulfilled our pledge of "equal justice for all," we would not fare well.

We know that the poor seek legal redress for essential human needs: protection from abusive relationships, access to necessary health care, habitable housing, disability

payments to help lead independent lives, child support and custody actions, relief from financial exploitation and more. The poor face proceedings where decisions on whether a person retains custody of his or her child, or a roof over their head, or obtains essential medical treatment are often made without the assistance of counsel. The lack of lawyers to represent the poor in obtaining and protecting their rights with respect to such fundamental issues ultimately led to the creation of the Legal Services Corporation. It is instructive to review briefly the history that preceded the adoption of the legislation which created it.

Early Efforts to Provide Free Legal Services for the Poor

The first organized effort in the United States to help the poor with their civil legal problems was begun in New York City. In 1876, the German Immigrants' Society was formed to address the exploitation of German immigrant

workers. The Society -- funded solely by charitable contributions -- was the predecessor to the Legal Aid Society of New York City, the nation's oldest non-profit provider of legal services to the poor, and where I spent my entire career prior to coming to LSC. There was no significant public funding for legal services until the 1960's, when President Lyndon Johnson launched his "War on Poverty," a part of which was to create a new federal agency, the Office of Economic Opportunity ("OEO"), headed by Sargent Shriver. Although legal services was not mentioned in the legislation that created OEO, Shriver was persuaded to include legal services as an activity that could be, and then was, funded by OEO.

There was considerable opposition from the nation's lawyers, who not only were concerned by possible unauthorized practice of law by social workers but feared a loss of the "monopoly" they had on the law. The private bar also worried about the adverse impact of free legal services

for the poor on the legal interests of their corporate or government clients. For virtually the first time ever, public institutions and private business interests such as social welfare agencies, public housing authorities, mental health facilities, hospitals, large private landlords, banks, school districts, and nursing homes could be held accountable for the legality of their actions by lawyers representing poor people. However, under the leadership of Justice Lewis Powell, who was then President of the American Bar Association, the ABA passed a resolution stating that it would cooperate with OEO in its development of a Legal Services Program that would serve the poor.

The Program began operating in 1965 and set about distributing grants to legal services organizations across the country. One of them was Idaho Legal Aid Services, which was created with an OEO grant in 1968.

Overwhelmed by the number of individual cases, the Program began to focus on community lawyering and on

what began to be called “law reform,” which involved bringing test cases and engaging in legislative advocacy to change statutes, regulations and policies that were unfavorable to the poor.

Creation of the LSC and the early years

As the programs began to achieve results, they not surprisingly began to draw political opposition. It became clear that, in order to insulate legal services from political challenges, it would be necessary to form a legal services entity that was independent of the Executive branch. What was recommended was the creation of a private, nonprofit corporation that would receive federal funds and would distribute them to private, non-profit legal services programs, run by independent Boards of Directors. In 1971, a bipartisan group in Congress introduced legislation based on that model to create the Legal Services Corporation. Despite several years of political debate and delay, on July

25, 1974, the legislation finally became law, one of the last bills signed by President Nixon before his resignation two weeks later.

The Act articulated LSC's mission, which was "to promote equal access to the system of justice and improve opportunities for low income people throughout the United States by making grants for the provision of high quality legal assistance to those who would be otherwise unable to afford legal counsel." The Act required that LSC have a Board of Directors composed of 11 members appointed by the President of the United States and confirmed by the Senate, and that no more than six members could be of the same political party. The Board then selects a President of LSC – that is the position I now hold.

The first Board, appointed by President Ford, established a national goal to achieve what they called "minimum access," which would be funding sufficient to

support at least two lawyers for every 10,000 poor persons. LSC *briefly* achieved its goal of “minimum access” in 1980.

With his election as President of the United States in 1980, Ronald Reagan brought his concerns about the use of federal funding for legal services programs with him to Washington. President Reagan proposed to eliminate LSC and replace it with grants to states which would then have greater control over the delivery of legal services to poor people.

LSC, however, had important defenders that were critical to its survival in the 1980s. First was the Congress. A bipartisan group of LSC supporters in Congress was able to resist efforts to eliminate LSC.

The other lifeline for LSC was the private bar. Leaders in the American Bar Association and state and local bar associations urged Congress to oppose policies hostile to LSC. A significant factor in gaining support from the private bar was greater involvement of private attorneys in the

actual delivery of legal services to the poor. In 1985, LSC adopted a regulation that required programs receiving its funds to allocate an amount equal to 12.5% of its LSC grants to provide opportunities for the involvement "of private attorneys in the delivery of legal assistance to eligible clients." Typically, these funds have been used to increase, support and administer a program's *pro bono* efforts. As more private attorneys became exposed to the realities of providing legal representation for the poor and the actual work of LSC-funded programs, the suspicions of LSC and its local programs subsided.

Although LSC was not eliminated, Congress cut its funding by 25%, which resulted in the closing of many local legal services program offices and the layoffs of thousands of staff members. In response to this greatly reduced funding, programs took a number of actions including diversifying their funding streams.

The most important new funding source was the creation of Interest on Lawyer Trust Account ("IOLTA") programs, which first began in Florida in 1981. IOLTA programs capture pooled interest on small or short-term deposits of client trust funds used for court fees or other nominal payments to lawyers. A change in banking laws in the early 1980s permitted these deposits of client funds for the first time to be placed in interest-bearing accounts, with the interest earned to be used for a variety of public service activities related to the law. IOLTA programs were later challenged as the unconstitutional taking of client property without just compensation in violation of the Fifth Amendment of the United States Constitution. But the programs survived the various challenges, and the United States Supreme Court upheld their constitutionality in 2003. Today there are IOLTA programs in all 50 states and the District of Columbia. The income IOLTA programs generate, of course, rises and falls with fluctuations in interest rates.

During the past few years, interest rates have dropped and the revenues from IOLTA programs have significantly declined.

Recent History

The 1990s brought a slight improvement in conditions for LSC, as President George H.W. Bush's administration consistently recommended that Congress continue to fund LSC at level funding.

During President Clinton's first term, Congress increased appropriations for LSC to $400 million for the 1994 fiscal year, which was the high point for LSC, and has not been equaled since.

However, the mid-term elections in 1994 significantly affected LSC. LSC again became a target for elimination under the "Contract for America" promoted by House Speaker Newt Gingrich. During this period in LSC's history, it seemed possible that the federal government's

commitment to providing equal access to justice for our nation's poor might come to an end.

Fortunately for LSC, there remained in Congress a bipartisan group supportive of continued federal funding for legal services. Essential Congressional support for the continuation of LSC was conditioned on several changes to LSC's operations and the activities of its local programs. These changes included the addition of numerous restrictions to ensure that the programs worked exclusively on the representation of individual poor persons. For instance, some of the new restrictions prohibited filing or participating in class actions, welfare reform advocacy and lobbying activities and prohibited LSC attorneys from representing certain aliens. The restrictions applied to all program activities, regardless of the funding source.

While adoption of the restrictions ultimately enabled LSC to survive, LSC nonetheless suffered a 30% reduction in federal funding, from $400 million to $278 million.

Not surprisingly, the legal services community opposed the restrictions imposed by Congress. Although some programs filed suit against LSC challenging the legality of the restrictions, to date only one restriction has been struck down. As a result of a Supreme Court decision in 2001, LSC lawyers may, in the course of representing an individual client against a welfare agency, challenge welfare reform laws.

Some programs chose to give up LSC funding as a result of the restrictions. Other programs spun off part of their programs into separate entities that would be supported in total by non-LSC funds, and, therefore, not be subject to the new Congressionally imposed restrictions. But most programs continued to operate within the restrictions and continued, in large measure, to do the legal work they did before the imposition of the restrictions.

When all was said and done, LSC survived its biggest challenge. Our budget has increased since the drastic cuts

of that time and we have focused on the representation of individual clients for which there continues to be an overwhelming need.

As part of LSC's response to Congressional actions in the mid-1990s, LSC started an initiative to encourage the formation of state justice communities. LSC encouraged its grantees to work with all stakeholders, including non-LSC funded programs, bar associations, law schools, and the judiciary to develop, through state planning, comprehensive, integrated systems of delivering civil legal services in each state.

Also, in an effort to be more efficient and effective, LSC went through a period of mergers and consolidations of programs in the late 1990s which continued through 2003, prior to my tenure. Some of the mergers were voluntary, but many were mandated by LSC. While there were 325 grantees in 1995, there are only 143 today. As a result, there are fewer but larger programs serving more poor

people in larger geographic areas. Whether the larger programs are more effective, efficient and of higher quality remains to be determined.

Federal funding for LSC slowly increased to approximately $330 million in 2001, and it has remained close to that level. While various other funding sources have been developed to help fill some of the void – including appropriations from state and local government budgets, court filing fees, attorney registration fees, state abandoned property funds, cy pres and punitive damages awards – the need for more funding remains.

During the 30 years of LSC's existence, there has been a shift in funding from LSC being practically the only funder of civil legal assistance to the poor to being one of many funders. But for most of its grantees, LSC remains the largest funding source and the core which is used by programs to leverage other funding streams. Seeking justice for all, as a bedrock principle of our system, remains a

federal responsibility, and LSC continues to vigorously pursue this mission.

Accomplishments

No discussion of the history of the efforts to provide civil legal services to the poor would be complete without highlighting the important achievements that have been made. The biggest accomplishment was expanding federally funded legal services from a handful of urban programs to a system that funds programs providing legal services in every county in the United States, as well as its territories.

Litigation brought by legal aid lawyers during the OEO and early LSC periods created important new legal rights. One of the most prominent examples is the 1970 Supreme Court case of *Goldberg v. Kelly*, which established the right to due process, including notice and an opportunity to be

heard, when government benefits such as disability benefits are denied, reduced, or terminated.

Just as important as the landmark cases, are the millions of individual cases that attorneys in legal services programs handle day after day. Legal aid attorneys attempt to resolve critical problems in the lives of their clients, whether it is helping individuals escape an abusive situation, preventing an eviction or foreclosure, overturning an unlawful denial, termination or reduction of public benefits, or protecting the elderly from predatory lenders. In many cases, our work is critical to the clients' economic and personal survival and that of their families as well. The overwhelming majority of our clients are women. Our clients are the most marginalized and vulnerable individuals among us. Many are children, survivors of domestic violence, elderly, veterans, or persons with disabilities; some are families facing evictions, the uninsured, the unemployed, low wage workers, homeless families with children,

institutionalized individuals, Native Americans on reservations, or migrant farmworkers. Legal services programs help improve the lives of low income persons by helping them obtain or maintain the basic necessities of life (food, shelter, health care, subsistence income) and to obtain stability, security, and self-sufficiency.

Every day in every legal aid office, I know we really make a meaningful difference in the lives of our clients and our clients' community. I would like to share just a few personal examples of our work:

One of my cases involved three elderly, frail, indigent nursing home residents who challenged the closing, without the appointment of a receiver, of the nursing home in which they had resided for many years. The New York Public Health Law stated that the Commissioner of Health shall seek the appointment of a receiver in such circumstances to oversee the operation of the nursing home and ensure the orderly transfer of the nursing home residents to a different

facility, as well as the adequacy of patient care and the health and safety of the residents. There was an issue as to whether the statute was mandatory or permissive. I obtained a stay prohibiting the removal of the residents until the state's highest court could rule on the statutory requirement to appoint a receiver. The day after the stay was granted, I went to visit my clients to tell them about the stay. To my great dismay, I found that the nursing home, with the knowledge of the State Department of Health, and without informing me, had moved the residents out in the middle of the night, in violation of a clear order of the court. I had to bring the first civil contempt motion ever filed in the highest court of our state and obtained a finding of civil contempt against the State Commissioner of Health and an order requiring the payment of a fine to my clients. Although my clients received only a modest monetary recovery for the harm done to them, such actions will never be legally repeated in the State of New York, since the court also ruled

that in all future closings of nursing homes, a receiver must be appointed to oversee the orderly transition and to ensure the adequacy of patient care.

Another personal example involved the devastating plight of destitute and needy children and their families who were homeless in New York City. After being contacted by homeless families with children, we discovered that some were being housed in a barrack-style gymnasium that had no partitions, just rows of cots. There was no place for their belongings, just plastic garbage bags in which to keep their things. The lights were on all night, and there was a filthy communal bathroom. Others were housed in a welfare hotel in Times Square for which the City was paying $100 a night a room for two beds to house a family with three children. These rooms had no refrigerators, and children had to walk down the hall corridor passing drug users to get to a bathroom. Still others stayed overnight in a welfare office,

sleeping on tables and chairs and on the floor under glaring fluorescent lights burning all night long.

As a result of a significant private grant, I created a Homeless Families Rights Project and assumed direct responsibility for providing advocates for those homeless families with children, responding to the individual needs of each family—those that included newborn children, those that included pregnant women, those whose children had asthma and other special medical problems, and those whose children were of school age and needed to continue to attend school. Through our efforts, appropriate emergency housing placements were obtained. As a result of the work of the Project staff, the barrack-style shelters were closed, placement of homeless families in substandard welfare hotels was prohibited, placement of families in an abandoned school building which had severe lead paint and asbestos hazards ended; and emergency housing for the homeless was required to meet minimum standards of

sanitation, decency and safety. Those major changes were achieved through the cumulative efforts of attending to the individual needs and rights of each homeless family.

The final example I would like to share with you is the response of New York Legal Aid lawyers to the tragedy of 9/11 in which they provided very valuable services to affected New Yorkers and became an important part of the City's recovery. Our office was across the street from the World Trade Center. Our staff saw people jumping out of the windows, and airplane parts fell on our roof. Our staff were some of the people you saw on television running north after the buildings collapsed. Our staff members were themselves devastated and required counseling. We had no access to our case files. Nevertheless, in the days following the attacks, while thousands were fleeing the World Trade Center area, our legal aid lawyers staffed the City's Disaster Centers in lower Manhattan seven days a week for more than ten months. They set up a disaster hotline with a single

point of entry to efficiently provide expedited referrals to neighborhood offices in all five boroughs, stationed staff at social service agencies, health care centers and union offices, prepared disaster assistance guides and worked with the state government to create a Disaster Medicaid Program. They helped 8,500 individuals one-by-one— those who lost family members, those who worked or lived in lower Manhattan, and who were otherwise affected by the disaster, including those who were suddenly out of work, lacking healthcare insurance, facing consumer credit problems and on the verge of eviction. Among the people we helped were restaurant workers, hotel workers, maintenance workers, delivery people, messengers, tour guides and small shop owners. Legal Aid lawyers provided legal assistance with housing, employment, family and consumer issues. It was a shining hour for legal aid staff and I was never more proud of them or of the work we do or of the difference we made for

those New Yorkers whose lives were so profoundly changed by the World Trade Center disaster of 9/11.

Current Developments and Initiatives

I believe that LSC is now at a fortunate time in its history, as it enjoys strong bipartisan support in Congress and the current administration**,** under President George W. Bush, which is the result of the outstanding work of our programs, careful monitoring by LSC to ensure compliance with Congressional restrictions, and the successful efforts by my predecessors. As the national oversight organization, we are committed to ensuring that the programs we fund provide high quality, client-centered civil legal services to the eligible poor in conformity with the mandates of Congress. Today, LSC, with a budget of $335.3 million, supports approximately 3700 full time attorneys in 143 programs and

handles approximately one million cases and four million matters, such as community legal education training.

While the survival of LSC is no longer a serious issue, the adequacy of funding to meet the needs of millions of individual clients remains a problem. One of our challenges is to document the "justice gap," that is, to effectively articulate the huge national gulf between the need for legal assistance and available resources, by gathering current data on the unmet legal needs of the poor, taking into account changes in the landscape since 1996. The last national survey of legal needs of poor clients was conducted in 1994 by the ABA and found that only 20% of the poor's legal needs were being met. In documenting the justice gap, barriers faced by low income clients such as geographical distance to a legal services program, low literacy, physical or mental disability, limited English proficiency, and apprehension about courts and the legal system need to be taken into account.

Another challenge is to expand the coalitions and partnerships necessary to support funding for civil legal services by working with the public, the courts, the private bar, and law schools. We must increase public awareness and, in turn, build public support for civil legal assistance. To do so, we need to increase the visibility of our programs and improve our ability to tell client stories to demonstrate the meaningful differences we make in our clients' lives. We need to work on developing relationships with the business community, religious institutions and faith-based communities, who should be our natural allies in helping and meeting the variety of needs of the disadvantaged.

The courts are another important partner, especially with the enormous growth in the number of *pro se* litigants. Because we are not able to provide legal services to all the eligible clients who need it, more and more poor Americans represent themselves. Although some individuals choose to go to court without counsel, most *pro se* litigants have no

choice. We need to work with the courts to find ways to support *pro se* litigants and provide the information and assistance they need to effectively navigate the court system and find access to justice without a lawyer at their side, as is being done here in Idaho.

While the organized bar has been critical to the creation and survival of LSC, it has also played an important role in providing *pro bono* legal representation to the poor. Currently, there are over 111,000 attorneys who provide *pro bono* services with LSC programs. But there is capacity to do so much more. We are a nation that has one million lawyers. Most are not engaged in organized, documented *pro bono* work. That means we have the potential to bring in hundreds of thousands of lawyers to help expand access to justice.

Pro bono work is, and always has been, a professional responsibility. The Model Rules of Professional Conduct provide that every lawyer has the professional responsibility

to provide legal services to those unable to pay and that a lawyer should aspire to render at least 50 hours of *pro bono* service per year. It is the only provision in the rules that is aspirational, but I would urge that lawyers should treat it like all the other provisions. Just as lawyers do not merely "aspire" to avoid conflicts of interest or simply "try" to maintain client confidentiality, lawyers should consider it their duty to provide assistance to indigent clients.

Almost 200 law schools in this country offer clinical programs which serve indigent clients. These clinics are the source of thousands of hours of legal assistance to poor clients.

The College of Law here at the University of Idaho is an excellent example. This morning I had the opportunity to meet with the faculty and students involved in the Legal Aid Clinics and learned about the wonderful work being done here, not only providing services in the traditional legal aid fields but also in appellate practice, small business, tax,

tribal and immigration law, as well as providing information and assistance to *pro se* litigants in the County Court.

Some law schools have adopted a mandatory requirement that students participate in a certain number of hours of *pro bono* activity in order to graduate. I was privileged earlier today to hear an initial discussion of this issue at the University of Idaho. Some law schools have summer fellowships and internships with public interest organizations or externships during the school year where students can work in legal services programs. These opportunities, as well as the clinical programs, expose law students to the fulfilling experience that comes from representing the disadvantaged. It may even motivate, as I hope it will, some law students to begin their careers working in the legal services community. And for those of you who pursue careers in the private sector, I hope you will always make an effort to give of your time and talents through *pro bono* representation and provide financial support to legal

services, and, if you become very successful, provide very generous financial support. Of course, the primary purpose of clinical programs is the education and training of law students.

However, all these efforts, as helpful as they are, will never be sufficient to address the "justice gap." If, as a society, we are serious about our commitment to equal justice for all, we need an ongoing and robust federally funded legal services program. Increasing support for federal funding is, and will continue to be, a formidable challenge as we foresee large federal deficits and continued increases in spending on national security.

Another tool to increase access to legal advice and information is the effective use of technology. It has been a major focus of LSC, and will continue to be so. Since the year 2000, LSC has had a Technology Initiative Grant (TIG) program, funded by Congress, to support the use of technology to more effectively and efficiently serve those in

need of legal assistance. This year, LSC allocated $2.9 million to the program. The grants have supported developments such as statewide legal services websites providing legal information to the public; the development of web-based self-representation tools; the expansion of video-conferencing for rural areas to allow clients to be represented where they would not otherwise be; and improved case management and telecommunications systems in programs that have comparatively limited resources. Here in Idaho, the Idaho Legal Aid Services website, funded by a 2002 TIG grant, provides a wealth of information for the public on numerous legal issues and information on how to seek legal assistance. Idaho Legal Aid Services also received a TIG award this year, which we announced yesterday, through which Idaho Legal Aid Services and the Idaho Supreme Court will develop over 300 court-approved legal forms, to be used statewide, which will be available to *pro se* litigants in both English and Spanish

on their statewide websites. Idaho Legal Aid Services will partner with 32 agencies to help inform the client community of this resource.

In addition to computer technology, another important recent development is the use of telephone hotlines, which are now used in 45 states to provide immediate legal advice, assistance and referral.

These tools help us use our limited resources more efficiently, and often provide some assistance to clients who otherwise might get no help at all. But technology and hotlines have their limits. Some clients will not have access to web-based sources or will not be able to use them. Many legal problems cannot be resolved with a client proceeding *pro se*, even with some limited assistance, and can only be addressed with extended individual representation. Nevertheless, maximizing the appropriate use of technology is one of many steps that we need to take to expand access to information and to improve program efficiency.

Quality

The primary emphasis during my tenure at LSC and my personal priority is to focus on program quality. It is not enough for a low-income person to have access to a lawyer if that access does not result in high quality service. Access to a lawyer is not, in and of itself, access to justice. The LSC Act requires LSC to ensure that the programs it funds are of the highest quality and meet professional standards. Our challenge is to determine how to actually define quality, how to measure quality, and what our role as a funder is in helping to promote and inspire LSC funded programs to provide the highest quality legal services possible.

By making quality a focus, I am not implying in any way that the representation provided by lawyers and other advocates in legal services programs have not been or are not now of high quality. Indeed, in my experience, the legal

representation provided by the civil legal services community has been and is of very high quality by any professional standard, even given the very scarce resources with which most, if not all, programs operate. But by putting quality at the forefront of what LSC stands for today, the aim is to make the delivery of services by programs to their clients even better.

When I began discussions with my colleagues about a focus on quality, and the related question of how to measure it, it became clear that "quality" is difficult to define. The term "quality" necessarily encompasses many concepts. Quality includes a program's capacities, the processes it follows, and the outcomes it achieves, including both the results for individual clients and the extent it is successful in securing outcomes which "assist in improving opportunities for low-income persons," as the LSC Act provides.

A basic component of quality is whether our work is making a difference in the lives of individual clients. Are we

providing representation in the types of cases that reflect the most critical needs of our client population? Are we taking steps to adequately address the needs of special populations of clients, such as those with limited English proficiency and migrant workers? In other words, are we integrated into the community so that we are aware of the changing needs of our clients, and are we responsive to those needs and changes in the services we provide?

Focusing on quality also means assuring that legal services programs are well-functioning organizations. Do programs have effective leadership and competent and motivated staff? Is there diversity in the workplace? Do programs support continuing training and participate in critical self-evaluation, as well as develop state and local resources to support their mission? Do programs make effective use of technology? The aim of LSC is to emphasize these goals and foster discussion within the legal

services community about how LSC and programs working together can further improve the services programs provide.

Of course, resources are always an issue. But within our current level of resources, we can do more to measure client outcomes and analyze the results of our representation; we need to review and update the performance standards that apply to the legal services community; and we should consider the use of peer review based on the model of ABA accreditation of law schools, a model I was very impressed with when I had the pleasure of participating on a law school accreditation team last year with your provost, Brian Pitcher.

The most important ingredient in building and maintaining high quality programs, of course, are the dedicated people who work in the legal services. I have first-hand knowledge of the exceptional talent and commitment of legal services staff. Achieving our goals will be impossible unless we continue to recruit and retain talented lawyers to

public service. This brings me to a pressing problem in the legal services community and one that I am sure is very real to many of the students here today. It is the burden of law school debt on lawyers wanting to pursue careers in public service.

Recognizing the severity of the problem, the ABA appointed a Commission on Loan Repayment and Forgiveness which produced a final report in 2003. The Report documents the rapidly increasing cost of a legal education. For example, 87% of law students now borrow to pay for law school, and today many graduate with over $80,000 of debt from private institutions and over $45,000 from public institutions. The starting salary at Idaho Legal Aid Services is $32,500. LSC has conducted its own survey, and most programs responded that law school debt has a serious impact on their ability to recruit and retain qualified staff attorneys.

One exciting development on this front is the possibility of LSC initiating a pilot Loan Repayment Assistance Program. The House of Representatives included language in our fiscal year 2005 appropriations bill that would allow LSC to use up to $1 million of previously appropriated but unspent funds to launch a pilot Loan Repayment Assistance Program. We established a Task Force on Loan Repayment this summer to help design the best possible pilot and hope to make it a permanent program.

Assuring high quality in legal services programs requires not only helping to make sure that there are enough talented lawyers entering the field, but also developing future leaders. To best serve our clients, we also must have diverse leaders and staff. LSC has made and will continue to make leadership development and diversity a priority. We are developing a mentoring program as part of leadership development. By taking these steps, we hope to develop a

diverse pool of potential future leaders in the legal services community.

Conclusion

In conclusion, a fundamental principle of the American system of justice is that it cannot be available only to those who can afford to pay for it. As the country that is supposed to exemplify "justice for all," we can and must do better in providing civil legal assistance to the poor. Access to justice is not an LSC issue alone. It is a national challenge to guarantee legal assistance for all in society, not just particular groups. We must continue to strive to reach that goal and fulfill our pledge. In his first Inaugural Address, Thomas Jefferson listed what he called the "essential principles of our government." The very first was "equal and exact justice to all." It requires that all of us, those in the legal services community, in government, the bar, the judiciary, the law schools, law students, the business

community, the faith-based community, and the community at large to keep working to make the principle and our pledge a reality, and not just an aspiration.

When I reflect on what motivated me to be a legal aid lawyer 37 years ago, and remain in this endeavor as long as I have, it is my belief that providing civil legal services to the poor is not only central to fundamental fairness, due process and equal protection of the law, it is how the law may be used to correct inequities and abuses and to secure and protect the rights of those less fortunate than I and we. It recognizes the importance and value of giving a voice to those not able to represent themselves and whose pressing concerns are not always foremost in the minds of the policymakers and the public. In order to foster respect for the law, there must be a commitment to ensure that no particular segment of society is excluded from access to justice and that the ability to resolve pressing civil legal problems is not based on financial status. We must never

give up on our quest. For ultimately, how we respond to the needs of the most vulnerable among us—at their time of greatest need—is clearly one of the ways by which we will be judged to be a civilized society.

The 30th Anniversary of LSC's establishment by Congress is an opportunity to restate our societal commitment to achieving equal access to justice for all Americans. Our pledge has not been fulfilled and may never be unless we decide as a society to honor it. As Judge Learned Hand aptly noted: "If we are to keep our democracy, there must be one commandment: thou shall not ration justice."

We have the privilege not only of living in this great democracy, but of serving in the profession that enables us to preserve and improve that democracy. We must embrace the responsibility that comes with those privileges, to ensure that justice truly is not just for some, but for all.

Thank you.